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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

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7 IN RE: CATHODE RAY TUBE (CRT)) Master File
8 ANTITRUST LITIGATION) No. CV-07-5944 SC
9 _____) MDL No. 1917
10 This document relates to:)
11 ALL ACTIONS) ORDER APPROVING AND
12) ADOPTING SPECIAL
13) MASTER'S REPORT,
14) RECOMMENDATIONS AND
15) TENTATIVE RULINGS RE:
16) DEFENDANTS' MOTIONS
17) TO DISMISS
18 _____)

19 **I. INTRODUCTION**

20 On February 5, 2010, the Special Master in the above matter
21 rendered his Report, Recommendations, and Tentative Rulings
22 Regarding Defendants' Motions to Dismiss. Docket No. 597
23 ("Report"). Defendants have filed objections, Docket Nos. 605,
24 607, 608, 610, 611, 612, 613, 614, 616, 617, 618, 619, 620, 622,
25 and Plaintiffs have responded, Docket Nos. 626, 627, 628, 629,
630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641. The
Court held a hearing on Defendants' objections on March 18, 2010.
Having considered the parties' filings and contentions, the Court
hereby APPROVES and ADOPTS the Special Master's rulings and
recommendations.

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27 **II. BACKGROUND**

28 This case concerns alleged conspiracies in the Cathode Ray

1 Tube ("CRT") industry. On June 16, 2008, the Court appointed the
2 Honorable Charles A. Legge, United States District Court Judge
3 (Retired), as a Special Master to assist the Court in this
4 litigation. Docket No. 302 ("Order Appointing Special Master").
5 On March 16, 2009, Direct Purchaser Plaintiffs filed a
6 Consolidated Amended Complaint. Docket No. 436 ("Direct Compl.").
7 Indirect Purchaser Plaintiffs filed a Consolidated Amended
8 Complaint on the same day. Docket No. 437 ("Indirect Compl.").
9 The Special Master reviewed Defendants' joint and individual
10 motions to dismiss, conducted a hearing on the motions to dismiss
11 on October 5, 2009, and issued his Report on February 5, 2010.
12

13 **III. LEGAL STANDARD**

14 Federal Rule of Civil Procedure 53 requires that in acting on
15 a Special Master's Report, "the court must give the parties notice
16 and an opportunity to be heard." Fed. R. Civ. P. 53(f)(1). The
17 parties stipulated that the Court would "review findings of fact
18 made or recommended by the Special Master for clear error" and
19 "review de novo any conclusions of law." Order Appointing Special
20 Master ¶ 18 (emphasis in original).

21
22 **IV. DISCUSSION**

23 **A. Standard of Review**

24 Most of the Special Master's recommendations are conclusions
25 of law that the Court will review de novo. The first
26 recommendation appears to rest on a finding of fact; namely, that
27 the relevant products alleged in the complaints are CRTs and CRT

1 Products. Report at 3-7, 33. However, out of an abundance of
2 caution, the Court reviews all of Judge Legge's recommendations de
3 novo.

4 **B. Relevant Products**

5 Judge Legge recommends that both the Direct Complaint and the
6 Indirect Complaint allege conspiracies regarding both CRTs and CRT
7 Products. Report at 3-7. Having reviewed both complaints, the
8 Court agrees with the Special Master. Both complaints contain
9 numerous allegations concerning both CRTs and the products into
10 which CRTs are incorporated; namely, televisions and computer
11 monitors.

12 With regard to the Direct Complaint, there can be no doubt
13 that the Direct Purchaser Plaintiffs are alleging conspiracies
14 regarding both CRTs and CRT Products. "CRT Products" is defined
15 by the Direct Purchasers as including color display tube products
16 and color picture tube products. Direct Compl. ¶ 1. Color
17 display tubes are the CRTs used in computer monitors, and color
18 picture tubes are the CRTs used in televisions. Id. Plaintiffs
19 allege they bought CRT Products. Id. ¶¶ 11-23. The class
20 allegations encompass CRT Products. Id. ¶¶ 85-92. The trade and
21 commerce allegations mention CRT Products. Id. ¶¶ 96, 97. The
22 allegations regarding collusive meetings refer to CRT Products.
23 Id. ¶¶ 134-53. Indeed, according to the Direct Purchaser
24 Plaintiffs, CRT Products are mentioned 135 times in the Direct
25 Complaint. Docket No. 633 ("Opposition to Joint Objections") at
26 8.

27 The Indirect Complaint is also replete with allegations
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1 concerning both CRT and CRT Products. The very first paragraph
2 alleges that "during the class period the Defendants conspired to
3 fix, raise, maintain, and/or stabilize prices of CRT Products sold
4 in the United States." Indirect Compl. ¶ 1. CRT Products are
5 defined by the Indirect Purchasers to include "(a) CRTs; and (b)
6 products containing CRTs, such as television sets and computer
7 monitors."¹ Id. ¶ 15. The Indirect Purchaser Plaintiffs allege
8 they purchased CRT Products from one or more of the Defendants.
9 Id. ¶¶ 19-49. The Indirect Purchaser Plaintiffs allege a
10 relationship between CRTs and the products into which CRTs are
11 incorporated such that Defendants were often able to pass through
12 the higher prices for CRTs to consumers. Id. ¶¶ 222-39. The
13 Court concludes that both complaints allege conspiracies regarding
14 both CRTs and the products into which CRTs are incorporated.

15 **C. Objections Based on Pleading Standards**

16 Judge Legge considered whether the complaints contain enough
17 factual allegations to give rise to plausible conspiracy claims
18 regarding both CRTs and CRT Products against these Defendants.
19 Report at 7-11. Judge Legge recommended that the Court deny the
20 motions to dismiss based on the pleading standards articulated by
21 the Supreme Court in Bell Atlantic Corp. v. Twombly, 550 U.S. 544
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23 ¹ The Court acknowledges that this definition in the Indirect
24 Complaint is somewhat vague, since references to "CRT Products"
25 include both CRTs and the finished products into which they are
26 incorporated. Nonetheless, and as explained below, the Court
27 agrees with Judge Legge that the complaints contain sufficient
allegations of a conspiracy to fix prices of both CRTs and the
products into which they are incorporated. Whether Plaintiffs will
be able to prove their allegations is a question for a later stage
of these proceedings.

1 (2007), and Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009). The Court
2 agrees with Judge Legge's recommendation.

3 To survive a motion to dismiss for failure to state a claim,
4 the plaintiff must allege "enough facts to state a claim to relief
5 that is plausible on its face." Twombly, 550 U.S. at 570.
6 "Specific facts are not necessary; the statement need only give
7 the defendant[s] fair notice of what . . . the claim is and the
8 grounds upon which it rests." Erickson v. Pardus, 551 U.S. 89, 93
9 (2007) (internal quotation marks omitted). "Determining whether a
10 complaint states a plausible claim for relief will . . . be a
11 context-specific task that requires the reviewing court to draw on
12 its judicial experience and common sense." Iqbal, 129 S. Ct. at
13 1950. In Twombly, an antitrust case, the Supreme Court noted
14 that:

15 Asking for plausible grounds to infer an
16 agreement does not impose a probability
17 requirement at the pleading stage; it simply
18 calls for enough fact[s] to raise a reasonable
expectation that discovery will reveal evidence
of illegal agreement. . . . [A]n allegation of
parallel conduct and a bare assertion of
conspiracy will not suffice.
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20 550 U.S. at 556.

21 Here, the Court finds that both complaints contain sufficient
22 factual allegations to give rise to plausible conspiracy claims
23 regarding both CRTs and CRT Products. Both complaints allege that
24 on February 10, 2009, a federal grand jury indicted C.Y. Lin,
25 former Chairman and CEO of Defendant Chunghwa Picture Tubes, Ltd.
26 ("Chunghwa"), for participating in a conspiracy to fix the price
27 of CRTs. Direct Compl. ¶ 126; Indirect Compl. ¶ 205. When
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1 announcing the indictment, the Acting Assistant Attorney General
2 in charge of the Antitrust Division suggested the conspiracy
3 extended beyond CRTs themselves: "This conspiracy harmed countless
4 Americans who purchased computers and televisions using cathode
5 ray tubes sold at fixed prices." Id. Both complaints note that
6 foreign antitrust enforcement authorities are investigating
7 whether there was price-fixing in the CRT market. Direct Compl.
8 ¶¶ 127-33; Indirect Compl. ¶¶ 206-13.

9 Direct Purchaser Plaintiffs allege that the conspiracy was
10 effectuated through agreements and common understandings reached
11 in at least 500 meeting between 1995 and 2007. Direct Compl.
12 ¶ 134. It is alleged that the meetings became more organized in
13 1997, when they became known as "Glass Meetings." Id. ¶ 137. The
14 Direct Complaint explains the structure and typical pattern of the
15 meetings, some of which were attended by individuals at the
16 highest level of Defendants' companies, and some of which
17 allegedly occurred on golf courses. Id. ¶¶ 138-53. It is alleged
18 that Defendants or their agents agreed to fix prices, exchange
19 information, coordinate public statements regarding capacity and
20 supply, keep meetings secret, allocate market share and customers,
21 and restrict output. Id. ¶ 138. The Direct Complaint alleges
22 that:

23 The agreements encompassed not only prices
24 charged to third party customers, but, in the
25 case of vertically integrated manufacturers
26 who produced both CRTs and CRT Products, also
27 encompassed: (a) prices charged by the CRT
manufacturing arm of each such integrated
company to the corporate division or
subsidiary that manufactured or sold computer
monitors, television or other similar products

1 and (b) price floors on quotations offered by
2 the competitors of the integrated company to
3 such a division or subsidiary. Defendants
also considered the internal pricing of
products containing CRTs in agreeing upon the
prices at which CRTs were set.
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5 Id. ¶ 144.

6 The Direct Complaint contains allegations supporting the
7 economic plausibility of the alleged conspiracy. See, e.g., id.
8 ¶¶ 112-21 (describing market concentration and joint ventures
9 among Defendants), ¶¶ 188-97 (describing stable and increasing
10 prices for CRT Products despite factors that should have caused
11 price declines, such as emergence of flat panel technology).

12 The Indirect Complaint contains similar allegations. See,
13 e.g., Indirect Compl., ¶¶ 121-39 (describing structural
14 characteristics of CRT Product market, including barriers to
15 entry, and how the market conducive to collusive activity), ¶¶
16 140-88 (allegations of group and bilateral meetings, "Glass
17 Meetings," and meetings on golf courses, some of which were
18 attended by high-level company executives), ¶¶ 189-202
19 (allegations of unnatural and sustained price stability or unusual
20 upward price movement in the CRT Product market). The Indirect
21 Purchaser Plaintiffs allege that Defendants:

22 agreed on the prices at which certain Defendants
23 would sell CRTs to their own corporate
24 subsidiaries and affiliates that manufactured
25 end products, such as televisions and computer
monitors. . . . Defendants . . . concluded that
in order to make their CRT price increases
stick, they needed to make the increase high
enough that their direct customers (CRT TV and
monitor makers) would be able to justify a
corresponding price increase to their customers.
In this way, Defendants ensured that price
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1 increases for CRTs were passed on to indirect
2 purchasers of CRT Products.

3 Id. ¶¶ 154-55. The Indirect Purchaser Plaintiffs allege that
4 manufacturers where raising the price of monitors in 2004. Id.
5 ¶ 197.

6 Many of Defendants' objections rely on Kendall v. VISA U.S.A.
7 Inc., 518 F.3d 1042 (9th Cir. 2008). The case is distinguishable.
8 The Ninth Circuit panel affirmed the district court's dismissal of
9 an antitrust action where, after conducting discovery, plaintiffs
10 were unable to amend their complaint to plead evidentiary facts
11 showing banks entered into agreements to restrain trade. Id. at
12 1048. Here, the complaints allege a governmental investigation,
13 hundreds of meetings between 1995 and 2007, and detailed
14 allegations concerning the structure and typical pattern of those
15 meetings.

16 For the most part, Defendants' objections re-hash arguments
17 that have been considered and rejected by courts in this district.
18 See, e.g., In re Flash Memory Antitrust Litiq., 643 F. Supp. 2d
19 1133, 1142, 1150 (N.D. Cal. 2009)(finding direct and indirect
20 purchasers' allegations sufficient to state antitrust claims
21 against manufacturers, sellers and distributors of flash memory);
22 In re TFT-LCD (Flat Panel) Antitrust Litiq., 559 F. Supp. 2d 1179,
23 1184-85 (N.D. Cal. 2009)(finding direct and indirect purchasers'
24 allegations sufficient to state antitrust claims against
25 manufacturers, distributors, and sellers of thin film transistor
26 liquid crystal display panels and products).

27 Indeed, the complaints here are very similar to the
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1 complaints Judge Illston considered in In re TFT-LCD (Flat Panel)
2 Antitrust Litigation. In that case, the complaints alleged
3 numerous conspiratorial communications, governmental
4 investigations, specific information concerning the structure and
5 content of meetings, allegations that the conspiracy was organized
6 at the highest level of the defendant organizations, and
7 allegations that it was implemented by related companies within a
8 corporate family. Id. at 1184. Here, as outlined above, the
9 complaints contain similar factual allegations. Drawing on its
10 judicial experience, this Court concludes the allegations
11 contained in the Direct Complaint and the Indirect Complaint meet
12 the pleading standards articulated by the Supreme Court in Twombly
13 and Iqbal.

14 D. Objections Based on Failure to Adequately Plead Against
15 Each Defendant

16 The Special Master recommends that the complaints should not
17 be dismissed based on a failure to adequately plead against each
18 defendant. Report at 11-16. Courts in this district do not
19 require plaintiffs in complex, multinational, antitrust cases to
20 plead detailed, defendant-by-defendant allegations; instead they
21 require plaintiffs "to make allegations that plausibly suggest
22 that each Defendant participated in the alleged conspiracy." In
23 re TFT-LCD (Flat Panel) Antitrust Litig., 559 F. Supp. 2d at 1185
24 (quoting In re Static Random Access Memory (SRAM) Antitrust
25 Litiq., 580 F. Supp. 2d 896, 904 (N.D. Cal. 2008)). In complex,
26 multinational, conspiracy cases, courts in this district review
27 specific allegations in the context of the complaint taken as a

1 whole. In re Flash Memory Antitrust Litiq., 643 F. Supp. 2d at
2 1144, 1147, 1148; In re TFT-LCD (Flat Panel) Antitrust Litiq., 559
3 F. Supp. 2d at 1185. Although not a pleading standards case, this
4 approach is consistent with the Supreme Court's admonition in
5 Continental Ore Company v. Union Carbide and Carbon Corporation
6 that the "character and effect of a conspiracy are not to be
7 judged by dismembering it and viewing its separate parts, but only
8 by looking at it as a whole." 370 U.S. 690, 699 (1962).

9 Having reviewed the complaints as a whole, the Court
10 determines that the factual allegations plausibly suggest that
11 each Defendant participated in the alleged conspiracy. As well as
12 the factual allegations described above, see Part IV(B-C), supra,
13 both complaints contain allegations concerning specific
14 Defendants' participation in the alleged unlawful meetings and
15 agreements. Direct Compl. ¶¶ 154-75; Indirect Compl. ¶¶ 166-88.
16 Although Plaintiffs often refer to a corporate family by a single
17 name, they allege that employees engaged in conspiratorial
18 meetings on behalf of members of their corporate families, that
19 participants did not always know the corporate affiliation of
20 their counterparts and did not distinguish between the entities
21 within a corporate family, and that participants "entered into
22 agreements on behalf of, and reported these meetings and
23 discussions to, their respective corporate families. As a result,
24 the entire corporate family was represented in meetings and
25 discussions by their agents and was a party to the agreements
26 reached in them." Direct Compl. ¶ 154; Indirect Compl. ¶ 188.

27 Samsung Electronic Co., Ltd. ("SEC") and Samsung Electronics
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1 America, Inc. ("SEAI") object based on the fact that they do not
2 manufacture CRTs; instead, they sell finished products. See
3 Docket Nos. 616 ("Samsung Objections re: Direct Complaint"), 617
4 ("Samsung Objections re: Indirect Complaint"). However, both
5 complaints describe the relationship between the Samsung
6 Defendants. Direct Compl. ¶¶ 58-66; Indirect Compl. ¶¶ 62-71. It
7 is alleged that SEC dominated and controlled the finances,
8 policies, and affairs of SEAI, and the other Samsung SDI entities,
9 relating to the alleged antitrust violations. Id.

10 Both complaints allege that "Samsung, through SEC, Samsung
11 SDI, Samsung Malaysia, Samsung SDI Shenzhen, and Samsung SD
12 Tianjin" participated in hundreds of meetings between 1995 and
13 2006 where agreements were made regarding price, output
14 restrictions, and customer and market allocation of CRT Products.
15 Direct Compl. ¶ 166; Indirect Compl. ¶ 166. The complaints allege
16 that SEAI was represented at the meetings, and that it wished to
17 ensure that the prices paid for CRT products did not undercut the
18 CRT pricing agreements reached at the meetings. Direct Compl.
19 ¶ 167; Indirect Compl. ¶ 167. SEC acknowledges that it has a
20 financial stake in Samsung SDI, a company that sells CRTs. See
21 Samsung Objections re: Direct Complaint at 1. Indeed, Samsung SDI
22 is alleged to have controlled twenty-four per cent of the CRT
23 market in 2002. Direct Compl. ¶ 112. It is economically
24 plausible that affiliated companies would wish to see any price
25 increases in CRTs passed through to the purchasers of CRT
26 Products.

27 Panasonic Corporation of North America ("PNA") and Panasonic
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1 Corporation ("Panasonic Corp.") also object based on the fact that
2 they sell finished products. See Docket Nos. 605 ("Panasonic
3 Objections re: Direct Complaint"), 608 ("Panasonic Objections re:
4 Indirect Complaint"). However, it is alleged that Panasonic
5 Corp., a Japanese company, dominated and controlled the finances,
6 policies and affairs of the other Panasonic entities relating to
7 the alleged antitrust violations. Direct Compl. ¶¶ 46-50,
8 Indirect Compl. ¶¶ 80-86.

9 The Direct Purchaser Plaintiffs allege that "Panasonic,
10 directly or through Matsushita Malaysia, participated in several
11 dozen bilateral and group meetings from 1996 through at least 2003
12 in which unlawful agreements as to . . . price, output
13 restrictions, and customer and market allocation of CRT Products
14 occurred." Direct Compl. ¶ 162. The Indirect Purchaser
15 Plaintiffs allege that between 1996 and 2003, Panasonic Corp.
16 participated in several Glass Meetings. Indirect Compl. ¶ 181.
17 They allege that after 2003, Panasonic participated through its
18 joint venture with Toshiba, MT Picture Display Co., Ltd. ("MTPD").
19 Id. High-level sales managers from Panasonic and MTPD allegedly
20 participated. Id. Indeed, MTPD is alleged to have led many of
21 the Glass Meetings. Id. ¶ 183. It is alleged that Panasonic
22 engaged in bilateral meetings with other Defendants, and that
23 during these meetings, agreements were reached regarding prices
24 and supply levels for CRT Products. Id. ¶ 181. Both complaints
25 allege that PNA wished to ensure prices paid by purchasers of CRT
26 products would not undercut the pricing agreements reached at the
27 Glass Meetings. Direct Compl. ¶ 163; Indirect Compl. ¶ 182. Such
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1 allegations make economic sense to the Court, especially given
2 that MTPD was engaged in the manufacture of CRTs, and is a
3 Panasonic-related entity. See Panasonic Objections re: Direct
4 Complaint at 2 n.1.

5 For similar reasons, the Court finds that the allegations in
6 the Direct Complaint and the Indirect Complaint are sufficient to
7 state a claim as to each of the Toshiba, LG Electronics, Hitachi,
8 and Philips entities. Both complaints describe the relationships
9 between the Toshiba entities, and it is alleged that Toshiba
10 Corporation dominated and controlled the other Toshiba entities in
11 relation to the alleged antitrust violations. Direct Compl.
12 ¶¶ 71-78; Indirect Compl. ¶¶ 72-78. Representatives of the
13 Toshiba entities are alleged to have participated in over fifty
14 bilateral and group meetings between 1995 and 2003. Direct Compl.
15 ¶ 171; Indirect Compl. ¶ 177. The Indirect Purchaser Plaintiffs
16 allege that Toshiba had a technology transfer agreement in 1995
17 with Chunghwa, the company whose CEO was indicted by the
18 Department of Justice. Indirect Compl. ¶ 128(g). The Indirect
19 Complaint quotes from Toshiba's 2008 Annual Report, which states
20 that the group was being investigated by the European Commission
21 and/or the U.S. Department of Justice for violations of
22 competition laws with respect to CRTs. Id. ¶ 212. The Indirect
23 Complaint alleges that Toshiba and Panasonic formed MTPD in 2002
24 in order to consolidate their CRT manufacturing facilities and
25 limit production of CRTs. Indirect Compl. ¶¶ 72, 80, 125, 177,
26 198. Taken together with the other allegations in the complaints,
27 and the allegations that participants in meetings entered into
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1 agreements on behalf of their corporate families, these factual
2 allegations plausibly suggest that each Toshiba Defendant
3 participated in the alleged conspiracy.

4 Both complaints describe the relationships between the LG
5 Electronics entities. Direct Compl. ¶¶ 41-45; Indirect Compl.
6 ¶¶ 50-53. LG Electronics, Inc. is alleged to have dominated and
7 controlled the finances, policies, and affairs of LG Electronics
8 USA, Inc., and LG Electronics Taiwan Taipei Co., Ltd., in relation
9 to the alleged violations. Direct Compl. ¶¶ 42, 43; Indirect
10 Compl. ¶¶ 51, 52. The LG Electronics Defendants are alleged to
11 have participated in a dozen bilateral meetings and over a hundred
12 group meetings between 1995 and 2006. Direct Compl. ¶¶ 160, 175.
13 To the extent that LG Electronics USA, Inc. distributed products
14 in the United States, the complaints allege it wished to ensure
15 prices for products would not undercut pricing agreements
16 regarding CRTs. Direct Compl. ¶ 161. There are also allegations
17 that the LG Electronics entities participated in meetings at trade
18 associations and trade events that were used to further the
19 conspiracy. Direct Compl. ¶¶ 176-80.

20 Both complaints describe the relationships between the
21 Hitachi entities. Direct Compl. ¶¶ 30-36; Indirect Compl. ¶¶ 87-
22 93. The complaints allege that Hitachi, Ltd., a Japanese company,
23 dominated and controlled the finances, policies, and affairs of
24 Hitachi America, Ltd., Hitachi Asia, Ltd., Hitachi Displays, Ltd.,
25 and Hitachi Electronic Devices (USA), Inc., relating to the
26 antitrust violations alleged. Id. The Direct Purchaser
27 Plaintiffs allege that the Hitachi entities participated in over a
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1 dozen illegal bilateral and group meetings from 1996 through at
2 least 2001. Direct Compl. ¶ 157. They allege that Hitachi
3 America, Ltd., and Hitachi Electronic Devices (USA), Inc. were
4 represented at the meetings and were parties to the agreements
5 entered at them. Id. ¶ 158. They allege that these distributors
6 of CRT Products wished to ensure the prices paid by consumers did
7 not undercut the pricing agreements regarding CRTs. Id. The
8 Indirect Purchaser Plaintiffs allege that the Hitachi entities
9 participated in several Glass Meetings, and that the meetings were
10 attended by high-level sales managers from Hitachi. Indirect
11 Compl. ¶ 179.

12 Both complaints describe the relationships between the
13 Philips entities. Direct Compl. ¶¶ 51-56; Indirect Compl. ¶¶ 54-
14 60. The complaints allege that Koninklijke Philips Electronics
15 N.V. ("Royal Philips"), a Dutch entity, dominated and controlled
16 the finances, policies, and affairs of Philips Electronics North
17 America Corporation, Philips Electronics Industries (Taiwan),
18 Ltd., and Philips da Amazonia Industria Electronica Ltda.,
19 relating to the antitrust violations alleged. Id. The Direct
20 Purchaser Plaintiffs allege that the Philips entities participated
21 in over 100 illegal meetings from 1996 to 2007. Direct Compl.
22 ¶¶ 164-65. The Indirect Purchaser Plaintiffs allege that the
23 Philips entities participated in at least 100 Glass Meetings
24 between 1996 and 2001, and that after 2001, they participated
25 through a joint venture with LG Electronics. Indirect Compl. ¶
26 170.

27 Beijing Matsushita Color CRT Co., Ltd. ("BMCC"), is alleged to
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1 have participated in over twenty illegal bilateral meetings.
2 Direct Compl. ¶¶ 80, 173. The Indirect Purchaser Plaintiffs
3 allege that high-level sales managers from BMCC participated in
4 multiple Glass Meetings. Indirect Compl. ¶¶ 2, 148, 184. BMCC
5 objects based on the fact that it makes CRTs only. See Docket No.
6 618 ("BMCC Objections re: Direct Compl.") at 3, No. 619 ("BMCC
7 Objections re: Indirect Compl.") at 1. BMCC is the only Defendant
8 to object on this basis, but it is clear to the Court that the
9 complaints do allege sufficient facts to state a plausible
10 conspiracy regarding CRTs, especially given the Department of
11 Justice investigation. See Part IV(C), supra. The Court
12 therefore overrules this objection, and also grants Plaintiffs'
13 request to amend paragraph 173 of the Direct Complaint, with
14 respect to the allegations against BMCC, to change the year "2001"
15 to "2007."

16 Whether Plaintiffs will be able to prove these allegations
17 against each Defendant is another matter entirely. In general,
18 Defendants' arguments for dismissal based on a failure to
19 adequately plead against each Defendant rely upon arguments more
20 appropriate at the summary-judgment stage of these proceedings
21 when Defendants can put Plaintiffs to their burden of proof.
22 Taken as a whole, the Court finds that both the Direct Complaint
23 and the Indirect Complaint plausibly suggest that each Defendant
24 participated in the alleged conspiracies. Therefore, it would be
25 inappropriate to dismiss any of the Defendants from this action
26 without the benefit of discovery.

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1 **E. Subject Matter Jurisdiction**

2 The Special Master recommends that the complaints should not
3 be dismissed for lack of subject matter jurisdiction under the
4 Foreign Trade Antitrust Improvements Act ("FTAIA"). Report at 16-
5 18. The FTAIA provides that the Sherman Act does not apply to
6 conspiracies involving trade or commerce with foreign nations,
7 unless such conduct has direct, substantial, and reasonably
8 foreseeable effects on United States commerce. 15 U.S.C. § 6a.

9 The Court agrees with Judge Legge that these complaints
10 should not be dismissed based on the FTAIA. When announcing the
11 indictment of C.Y. Lin, the Acting Assistant Attorney General
12 suggested the alleged CRT conspiracy does have effects in the
13 United States: "This conspiracy harmed countless Americans who
14 purchased computers and televisions using cathode ray tubes at
15 fixed prices." Direct Compl. ¶ 126; Indirect Compl. ¶ 205.

16 The Direct Complaint alleges that Defendants manufactured,
17 sold, or distributed CRT products throughout the United States,
18 either directly or through subsidiaries or affiliated companies.
19 Direct Compl. ¶¶ 24-80. The Direct Complaint alleges plant
20 closures in New York, Ohio, and Indiana in furtherance of the
21 claimed conspiracy to reduce manufacturing capacity of CRTs. Id.
22 ¶¶ 183, 185, 187. The Direct Complaint alleges adverse price
23 effects in the United States due to Defendants' unlawful
24 activities. Id. ¶¶ 188-89.

25 Similarly, the Indirect Purchaser Plaintiffs have alleged a
26 conspiracy encompassing both CRTs and CRT Products that was
27 carried out both in the United States, and abroad, which involved
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1 a substantial amount of import and domestic commerce, and which
2 targeted and injured American consumers. See, e.g., Indirect
3 Compl. ¶¶ 1, 9, 10, 11, 12, 50-52, 54-59, 61-70, 72-78, 80-83,
4 85-92, 94-95, 97-98, 100-02, 104-08, 114-16, 162, 167, 169, 171,
5 174, 176, 178, 180, 182, 188, 240, 242, 246, 248-50, 255-71 and
6 274-283. At this stage of the proceedings, these allegations are
7 sufficient to withstand motions to dismiss for lack of subject
8 matter jurisdiction.

9 **F. Antitrust Standing**

10 The Special Master recommends denial of the motions to
11 dismiss based on Plaintiffs' supposed lack of standing. In
12 deciding whether there is antitrust standing, courts consider: (1)
13 the nature of the plaintiff's alleged injury; that is, whether it
14 was the type the antitrust laws were intended to forestall; (2)
15 the directness of the injury; (3) the speculative measure of the
16 harm; (4) the risk of duplicative recovery; and (5) the complexity
17 in apportioning damages. Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 535-44
18 (1983) ("AGC"). No single factor is decisive; courts are to
19 balance the factors, giving "great weight to the nature of the
20 plaintiff's alleged injury." American Ad Mgmt., Inc. v. Gen. Tel. Co. of Cal., 190 F.3d 1051, 1055 (9th Cir. 1999).

21 Here, the Direct Purchaser Plaintiffs allege they purchased
22 CRTs or CRT Products from Defendants or their subsidiaries at
23 inflated prices due to Defendants' unlawful conduct. Direct
24 Compl. ¶¶ 11-23. This is the type of injury the antitrust laws
25 were intended to address. Furthermore, courts have found
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1 antitrust standing where plaintiffs purchased downstream goods
2 from manufacturers who made, and allegedly fixed the price of, a
3 component of those goods. See, e.g., In re Linerboard Antitrust
4 Litiq., 305 F.3d 145, 159-60 (3d Cir. 2002)(in alleged conspiracy
5 to fix prices of linerboard, plaintiffs who purchased corrugated
6 sheets or boxes containing linerboard from defendants had
7 standing).

8 In Illinois Brick Company v. Illinois, the Supreme Court held
9 that indirect purchasers generally may not sue for money damages
10 under Section 4 of the Clayton Act. 431 U.S. 720, 730 (1977). In
11 response, a number of states passed "repealer" statutes which
12 expressly allow indirect purchasers to recover money damages for
13 antitrust violations under state law. See California v. ARC Am.
14 Corp., 490 U.S. 93, 97-98(1989). In the present case, the
15 Indirect Purchaser Plaintiffs' second claim for relief for state
16 antitrust violations is predicated on the repealer statutes of
17 Arizona, California, Iowa, Kansas, Michigan, Minnesota,
18 Mississippi, Nebraska, Nevada, New Mexico, North Carolina, North
19 Dakota, South Dakota, Tennessee, Vermont, West Virginia,
20 Wisconsin. Indirect Compl. ¶¶ 255-71. The AGC factors apply to
21 establish standing under Iowa, Nebraska, and California antitrust
22 laws. In re Flash Memory Antitrust Litigation, 643 F. Supp. 2d at
23 1151.

24 Defendants argue that the Indirect Purchaser Plaintiffs have
25 not alleged that they participate in the same market as
26 Defendants, and as such, their alleged injury is too remote,
27 speculative, unmanageably complex, or duplicative. Docket No. 614

1 ("Joint Objections re: Indirect Compl.") at 12-13. However, the
2 Indirect Complaint alleges that Plaintiffs paid "higher prices for
3 CRT Products than they would have paid in the absence of
4 Defendants' conspiracy." Indirect Compl. ¶ 222. It alleges that
5 the "price of CRT Products is directly correlated to the price of
6 CRTs." Id. ¶ 226. It alleges that the "market for CRTs and the
7 market for CRT Products are . . . inextricably linked and cannot
8 be considered separately." Id. ¶ 227. Indirect Purchaser
9 Plaintiffs allege that Defendants monitored the prices of
10 televisions and computer monitors in order to police their price
11 fixing agreement related to CRTs. Id. ¶ 223. They point out that
12 CRTs account for approximately sixty per cent of the cost of
13 manufacturing a computer monitor, and a slightly smaller
14 percentage of the cost of manufacturing a television, and as such
15 it is easier to determine how much money was being passed through
16 to purchasers of the finished products. Id. ¶ 228-30. CRTs are
17 discrete components that can easily be traced. Id. ¶ 231. These
18 allegations are sufficient to find the injury alleged in the
19 Indirect Complaint is the kind antitrust laws were designed to
20 rectify.

21 The Court also agrees with the Special Master that Plaintiffs
22 have adequately pled standing to seek injunctive relief under
23 Section 16 of the Clayton Act. See Report at 19; see also In re
24 Warfarin Sodium Antitrust Litig., 214 F.3d 395, 399 (3d Cir. 2000)
25 ("[I]njunctive relief under section 16 only requires a threat of
26 loss" and section 16 is not as demanding as section 4 of Clayton
27 Act).
28

1 G. Allegations of Fraudulent Concealment

2 The Special Master recommends that the motions to dismiss
3 claims accruing more than four years before the complaints were
4 filed should be denied. Report at 19-24. The Special Master also
5 recommends that the challenges to the sufficiency of the
6 fraudulent concealment allegations should be denied. Id. The
7 Court agrees with the Special Master's recommendations.

8 The Court notes that "it is generally inappropriate to
9 resolve the fact-intensive allegations of fraudulent concealment
10 at the motion to dismiss stage, particularly when the proof
11 relating to the extent of the fraudulent concealment is alleged to
12 be largely in the hands of the alleged conspirators." In re
13 Rubber Chemicals Antitrust Litiq., 504 F. Supp. 2d 777, 789 (N.D.
14 Cal. 2007). The Court further notes that Defendants' reliance on
15 Barker v. American Mobil Power Corp., 64 F.3d 1397 (9th Cir. 1995)
16 is misplaced. In that case, the Ninth Circuit panel was reviewing
17 an order on motions for summary judgment. Id. at 1400. After an
18 opportunity for discovery, plaintiffs were unable to produce
19 specific evidence of fraudulent activity or concealment on the
20 part of two of the defendants. Id. at 1401. Here, on the other
21 hand, discovery is in its early stages, and motions for summary
22 judgment have not been filed.

23 The Direct Complaint contains allegations of fraudulent
24 concealment. Direct Purchaser Plaintiffs allege that Defendants
25 gave pretextual reasons for price increases, and coordinated their
26 misleading announcements. Direct Compl. ¶¶ 148, 153, 206. Direct
27 Purchaser Plaintiffs allege Defendants took steps to keep their

1 meetings secret, such as varying meeting locations, limiting
2 meeting attendees, avoiding note-taking, and agreeing to maintain
3 the secrecy of meetings. Id. ¶¶ 137, 138, 154, 201, 204, 205.
4 Plaintiffs allege that CRT manufacturers, including companies
5 affiliated with Samsung, Philips, and LG Electronics, blamed price
6 increases in 2004 on a shortage of glass shells. Id. ¶ 209.

7 The Indirect Complaint also contains allegations of
8 fraudulent concealment. Indirect Purchaser Plaintiffs allege that
9 the agreements reached at Glass meetings included agreements to
10 keep their meetings secret. Indirect Compl. ¶ 156(1). Indirect
11 Purchaser Plaintiffs allege Defendants agreed: "not to discuss
12 publicly, or otherwise reveal, the nature and substance" of their
13 dealings, and "to expel those who failed to do so"; "to limit the
14 number of representatives from each Defendant attending their
15 meetings so as to avoid detection"; "to refrain from listing the
16 individual representatives of the Defendants in attendance at
17 meeting in any meeting report"; "to refrain from taking meeting
18 minutes or taking any kind of written notes during the meetings";
19 and to give "false and pretextual reasons for CRT Product price
20 increases." Indirect Compl. ¶ 290. Defendants also allegedly
21 agreed "on what to tell customers about price changes"; agreed
22 "upon the content of public statements regarding capacity and
23 supply"; and agreed "to eliminate references in expense reports
24 that might reveal the existence of their unlawful meetings." Id.
25 When viewed in conjunction with the Court's earlier determination
26 that the factual allegations in the complaints plausibly suggest
27 that each Defendant participated in the conspiracy, these

1 allegations of fraudulent concealment are sufficient to deny
2 Defendants' efforts to dismiss claims that accrued before Nov. 26,
3 2003, based on the four-year statute of limitations.²

4 **H. Withdrawal Claims**

5 With regard to those Defendants who moved to dismiss based on
6 claims that they withdrew from the alleged conspiracy in 2001 or
7 2002, the Court agrees with the Special Master that this issue
8 raises factual questions inappropriate for resolution at the
9 motion-to-dismiss stage. See Report at 25. For example, how can
10 the Court know at this stage of the proceedings whether the
11 withdrawing Defendants maintained financial interests in the
12 entities being sold or transferred? It would have been
13 inappropriate for the Special Master to grant the motions to
14 dismiss filed by the Philips Defendants, the Toshiba Defendants,
15 the Hitachi Defendants, the LG Electronics Defendants, and BMCC,
16 on these grounds.

17 **I. State Law Claims**

18 The Special Master recommends that a number of the state law
19 claims in the Indirect Complaint should be dismissed. Report at
20 27-31. The Indirect Purchaser Plaintiffs do not object to these
21

22 ² The Court is concerned about the temporal scope of the
23 alleged conspiracies in this case. As directed by the Court at the
24 March 18, 2010 hearing, the parties met and conferred, but appear
25 unable to reach a mutually acceptable proposal to present to the
26 Court. See Docket Nos. 660, 661, and 662. The Court acknowledges
27 that allegations of fraudulent concealment are fact-intensive. The
Court encourages the parties to work with the Special Master on
ways to streamline and efficiently manage discovery in this case.
After discovery, the Court invites the parties to consider whether
motions should be filed to determine the statute of limitations, or
whether the matter should be left as a question for the jury.

1 rulings against them. Docket No. 641 ("Response to Joint
2 Objections") at 1. The Court therefore adopts the recommendation
3 of the Special Master, and DISMISSES the claims under Nebraska law
4 based on sales made prior to July 20, 2002; the claims under
5 Nevada law based on sales made prior to 1999; the claims under the
6 Massachusetts Consumer Protection Act, with leave to amend; the
7 claims under the Rhode Island Unfair Trade Practices and Consumer
8 Protection Act; and the claims made under Kansas' common law of
9 unjust enrichment.

10 The Special Master also recommends that a number of the state
11 law claims should not be dismissed. Report at 30-33. Defendants'
12 objections contains no specific discussion of these
13 recommendations. Accordingly, the Court adopts the Special
14 Master's recommendations, and DENIES the motions to dismiss
15 Plaintiffs' claims under New York General Business Law Section
16 349; the claims under Michigan common law of unjust enrichment;
17 the claims of unjust enrichment under New York common law; and the
18 unjust enrichment claims of several states based upon other
19 statutes in those states.

20

21 **V. CONCLUSION**

22 For the foregoing reasons, the Court APPROVES and ADOPTS the
23 Special Master's tentative rulings and recommendations in the
24 following particulars:

25 1. The Court finds that the relevant products alleged in the
26 complaints are Cathode Ray Tubes ("CRTs") and CRT Products;
27 2. The Court DENIES Defendants' motions to dismiss based

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1 upon Twombly and Iqbal;

2 3. The Court DENIES Defendants' motions to dismiss based
3 upon an alleged failure to adequately plead against "each
4 defendant";

5 4. The Court DENIES Defendants' motions to dismiss based
6 upon the Foreign Trade Antitrust Improvements Act, the Supremacy
7 Clause, and the Commerce Clause;

8 5. The Court DENIES Defendants' motion to dismiss based upon
9 Plaintiffs' alleged lack of standing;

10 6. The Court FINDS that the allegations of the direct and
11 indirect complaints regarding fraudulent concealment are adequate
12 to toll the statutes of limitations;

13 7. The Court DENIES Defendants' motions to dismiss both the
14 direct and indirect complaints on the grounds of the statutes of
15 limitations;

16 8. The Court GRANTS Plaintiffs' motion to amend paragraph
17 173 of the Direct Complaint, with respect to the allegations
18 against BMCC to change the year "2001" to "2007";

19 9. The Court DENIES the motions of several Defendants for
20 dismissal based on their alleged withdrawal from the conspiracy;

21 10. The Court DISMISSES the claims under Nebraska law based
22 on sales made prior to July 20, 2002;

23 11. The Court DISMISSES the claims under Nevada law based on
24 sales made prior to the 1999 date of Nevada's repealer statute;

25 12. The Court DISMISSES the claims under the Massachusetts
26 Consumer Protection Act, with leave to amend;

27 13. The Court DENIES the motions to dismiss Plaintiffs'

1 claims under New York General Business Law Section 349;

2 14. The Court DISMISSES the allegations under the Rhode
3 Island Unfair Trade Practices and Consumer Protection Act;

4 15. The Court DENIES the motion to dismiss the claims under
5 Michigan common law of unjust enrichment;

6 16. The Court DISMISSES the claims under the Kansas' common
7 law of unjust enrichment;

8 17. The Court DENIES Defendants' motion to dismiss the claims
9 of unjust enrichment under New York common law;

10 18. The Court DENIES, without prejudice, Defendants' motions
11 to dismiss the unjust enrichment claims of several states based
12 upon other statutes in those states;

13 19. The Court requires Defendants to file answers within
14 thirty (30) days from the date of this Order;

15 20. The Court respectfully directs the Special Master to set
16 a date for a Case Management Conference to schedule further
17 proceedings in this case.

18

19 IT IS SO ORDERED.

20

21 Dated: March 30, 2010


22 UNITED STATES DISTRICT JUDGE

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